

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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|-------------------------------------|---|----------------------|
| EDUARDO CARIAS, on behalf of |) | Case No. 07-0083 SC |
| himself and all others similarly |) | |
| situated, |) | ORDER DENYING |
| |) | DEFENDANT LENOX |
| Plaintiffs, |) | FINANCIAL MORTGAGE |
| |) | CORPORATION'S MOTION |
| v. |) | FOR PARTIAL SUMMARY |
| |) | <u>JUDGMENT</u> |
| LENOX FINANCIAL MORTGAGE |) | |
| CORPORATION; LSI TITLE COMPANY; and |) | |
| DOES 1 through 25, |) | |
| |) | |
| Defendants. |) | |

I. INTRODUCTION

This matter comes before the Court on the Motion for Partial Summary Judgment by the defendant Lenox Financial Mortgage Corporation ("Lenox" or "Defendant"). See Docket No. 36. Plaintiff Eduardo Carias filed an Opposition and Defendant submitted a Reply. See Docket Nos. 61, 68. For the following reasons, the Court DENIES Defendant's Motion.

II. BACKGROUND

Lenox, a loan broker, aired the following advertisement on the radio: "If you're paying a single dime at closing when you refinance your home or purchasing [sic] a new one, it's too much. . . . We'll pay for your appraisal, title, escrow, everything. . . ." Mot. at 2-3. Plaintiff heard this and refinanced his home-loan with Lenox.

1 After discovering that the new loan was allegedly different
2 than what Lenox had promised, Plaintiff filed the present class
3 action in California state court, alleging breach of fiduciary
4 duty, violations of California's Business and Profession's Code,
5 fraud, and violation of the Federal Real Estate Settlement
6 Procedures Act, 12 U.S.C. § 2607. Defendants removed the case to
7 federal court.

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9 **III. DISCUSSION**

10 Entry of summary judgment is proper "if the pleadings, the
11 discovery and disclosure materials on file, and any affidavits
12 show that there is no genuine issue as to any material fact and
13 that the movant is entitled to judgment as a matter of law." Fed.
14 R. Civ. P. 56(c). "Summary judgment should be granted where the
15 evidence is such that it would require a directed verdict for the
16 moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250
17 (1986). Thus, "Rule 56(c) mandates the entry of summary judgment
18 . . . against a party who fails to make a showing sufficient to
19 establish the existence of an element essential to that party's
20 case, and on which that party will bear the burden of proof at
21 trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In
22 addition, entry of summary judgment in a party's favor is
23 appropriate when there are no material issues of fact as to the
24 essential elements of the party's claim. Anderson, 477 U.S. at
25 247-49.

26 Defendant has moved for partial summary judgment on
27 Plaintiff's false advertising, fraud and breach of fiduciary duty
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1 claims and on the issue of whether Defendant improperly charged
2 Plaintiff "closing costs." The Court finds that triable issues of
3 fact exist as to all of these claims and therefore denies
4 Defendant's Motion.

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6 **IV. SCHEDULING**

7 The Court hereby vacates the existing discovery cut-off date,
8 the date for the last day for motions, the pre-trial date, and the
9 existing trial date. A new trial-setting conference is scheduled
10 for April 25, 2008, at 10:00 a.m. in Courtroom # 1 on the 17th
11 floor.

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13 **V. CONCLUSION**

14 For the reasons stated above, Defendant's Motion for Partial
15 Summary Judgment is DENIED.

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18 IT IS SO ORDERED.

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20 Dated: January 28, 2008



21 UNITED STATES DISTRICT JUDGE
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